

**REMARKS**

**I. THE REJECTION UNDER 35 U.S.C. § 112**

The Office Action rejects claims 1, 2, 6-9, 15-17 and 35 under 35 U.S.C. § 112 asserting that the claims fail to comply with the written description requirement. In particular, the Office Action asserts that the written description does not provide support for 90% homology to SEQ ID NO:1 or to fragments or derivatives of SEQ ID NO:1.

In response, Applicants amend claim 1 herein to recite SEQ ID NO:1. Claim 2 is amended to recite sequences that have at least 90% homology. Support can be found in the disclosure at, e.g., page 4, lines 4-23; page 6, lines 2-11; and page 7, line 26 to page 8, line 1. Reconsideration and withdrawal of the rejection of claims 1, 2, 4, 6-9, 15-17 and 35 under 35 U.S.C. § 112 are respectfully requested.

**II. THE REJECTION UNDER 35 U.S.C. § 102**

The Office Action rejects claims 1, 2, 6-9, 15-17 and 35 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,747,137 ("the '137 patent"). In particular, the Office Action asserts that the '137 patent discloses sequences that are 81% homologous to SEQ ID NO:1.

In response, claim 1 is amended to remove homology that would otherwise overlap with the '137 patent. Reconsideration and withdrawal of the rejection of claims 1, 2, 6-9, 15-17 and 35 under 35 U.S.C. § 102 are respectfully requested.

**III. THE DOUBLE PATENTING REJECTION**

The Office Action rejects claims 1-3, 6-9, 15-17 and 35 under the judicially created doctrine of obviousness-type double patenting over co-pending application serial no. 10/451,467 ("the '467 application"). In particular, the Office Action asserts that the sequences claimed in the '467 application are at least 88.9% homologous to SEQ ID NO:1.

In response, claim 1 is amended to remove homology that would otherwise overlap with the '467 application. Reconsideration and withdrawal of the rejection of claims 1-3, 6-9, 15-17 and 35 under the judicially created doctrine of obviousness-type double patenting are respectfully requested.

#### **IV. CONCLUSION**

Early consideration and prompt allowance of the pending claims are respectfully requested. Should the Office require anything further, it is invited to contact Applicants' representative at the telephone number listed below.

Respectfully submitted,

/Laura A. Donnelly/

By: \_\_\_\_\_  
Laura A. Donnelly  
Registration No. 38,435  
Attorney for Applicants

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
Telephone: 732-524-1729  
Facsimile: 732-524-2808  
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